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12 *Holders of Trade Claims*

13 **UNITED STATES BANKRUPTCY COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**

16 In re:
17 PG&E CORPORATION
18 -and-
19 PACIFIC GAS AND ELECTRIC
COMPANY,
20 Debtors.
☐ Affects PG&E Corporation
21 ☐ Affects Pacific Gas and Electric
Company
22 ☒ Affects both Debtors
23 * All papers shall be filed in the Lead
24 Case, No. 19-30088 (DM).

Bankruptcy Case No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

District Case No. 20-cv-01493 (HSG)

**TRADE COMMITTEE'S STATEMENT OF
ISSUES, DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD, AND
CERTIFICATION REGARDING
TRANSCRIPTS**

25 AD HOC COMMITTEE OF
26 HOLDERS OF TRADE CLAIMS,
27 Appellant,
v.
28 PG&E CORPORATION, et al.,
Appellees.

1 NOTICE IS HEREBY GIVEN that the Ad Hoc Committee of Holders of Trade Claims
2 (the “Trade Committee” or “Appellant”) hereby provides, pursuant to Rule 8009 of the Federal
3 Rules of Bankruptcy Procedure, the following statement of issues, designation of items to be
4 included in the record, and certificate regarding transcripts in connection with the Appellant’s
5 *Notice of Appeal and Statement of Election to Have Appeal Heard by District Court* [D.I. 5844]
6 (the “Notice of Appeal”). As set forth in the Notice of Appeal, the Appellant appeals from (i) the
7 *Interlocutory Order Regarding Postpetition Interest* [D.I. 5669] entered on February 6, 2020 (the
8 “PPI Order”) and (ii) the related *Memorandum Decision Regarding Postpetition Interest* entered
9 on December 30, 2019 [D.I. 5226] (the “PPI Memorandum” and together with the PPI Order, the
10 “PPI Memorandum and Order”) by the United States Bankruptcy Court for the Northern District
11 of California (the “Bankruptcy Court”).

12 **STATEMENT OF ISSUES ON APPEAL**

13 Bankruptcy Code section 1129 sets forth the requirements for confirmation of a chapter 11
14 plan. Section 1129(a)(8) requires that, “[w]ith respect to each class of claims or interests—(A)
15 such class has accepted the plan; or (B) such class is not impaired under the plan.” Under the
16 Bankruptcy Code, a class of claims is impaired unless the plan, with respect to each claim in such
17 class, “leaves unaltered [its] legal, equitable, and contractual rights.” 11 U.S.C. § 1124(1). A “class
18 that is not impaired,” on the other hand, is “conclusively presumed to have accepted the plan” and
19 has no right to vote on it. *Id.* § 1126(f).

20 Where an impaired class votes against a chapter 11 plan, if all conditions of section 1129(a)
21 are satisfied other than section 1129(a)(8), the plan can be confirmed only if it “does not
22 discriminate unfairly, and is fair and equitable” with respect to each impaired class of claims that
23 has not accepted the plan. *Id.* § 1129(b)(1). Moreover, for “each impaired class of claims,” section
24 1129(a)(7) requires that each holder of a claim or interest who has not accepted the plan must
25 “receive . . . under the plan . . . value . . . that is not less than the amount such holder would receive
26 . . . if the debtor were liquidated under chapter 7[.]” Section 726(a) of the Bankruptcy Code
27 provides the order by which estate property shall be distributed to creditors in a chapter 7
28 liquidation, and provides, as the “fifth” priority, for payment of post-petition interest “at the legal

1 rate.” In *Onink v. Cardelucci (In re Cardelucci)*, 285 F.3d 1231 (9th Cir. 2002), the Ninth Circuit
2 held that the “legal rate” under section 726(a)(5) was the federal judgment rate provided for in 28
3 U.S.C. § 1961. *See Cardelucci*, 285 F.3d at 1233.

4 Appellant’s members hold General Unsecured Claims¹ against the Debtors that are based
5 on contracts that incorporate California state law, which in turn provides that, in the event of
6 breach, interest shall accrue at the rate of 10 percent per annum, unless a different rate is specified
7 in writing. The Debtors’ Plan proposes to pay holders of General Unsecured Claims post-petition
8 interest on such claims at the Federal Judgment Rate (calculated as of the Petition Date as 2.59%).
9 The Plan nevertheless asserts that General Unsecured Claims are unimpaired, and thus have no
10 right to vote for or against the Plan or to challenge the Plan as “discriminating unfair[ly]” or not
11 “fair and equitable” under Bankruptcy Code section 1129(b).

12 In the PPI Memorandum and Order, the Bankruptcy Court held that General Unsecured
13 Claims were impaired not by the Plan, but instead by section 726(a)(5) of the Bankruptcy Code
14 and its requirement that post-petition interest be paid at the “legal rate.” The issue on appeal is
15 whether, in a bankruptcy case in which the debtor is solvent, Bankruptcy Code section 726(a)(5),
16 which can apply in a chapter 11 bankruptcy case only to “each impaired class of claims,” 11 U.S.C.
17 § 1129(a)(7), may apply to reduce the rate of interest owed to a class of claims that is asserted by
18 the Plan to be unimpaired.

19 **DESIGNATION OF RECORD ON APPEAL**

20 Appellant hereby designates the following items to be included in the record on appeal,
21 which includes all exhibits and addenda attached thereto and filed therewith and all documents
22 incorporated by reference therein:

23

Item	Filing Date	Docket No. ²
Amended Declaration of Jason P. Wells in Support of First Day Motions and Related Relief	Feb. 1, 2019	263

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27 ¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the *Debtors’ and*
Shareholder Proponents’ Joint Chapter 11 Plan of Reorganization Dated January 31, 2020 [D.I. 5590] (the “Plan”).

28 ² Unless otherwise indicated, all references herein to “Docket No.” shall be to the docket maintained in the above-
captioned chapter 11 cases.

Schedule E/F: Creditors Who Have Unsecured Claims For Non-Individual Debtor PG&E Corporation	Mar. 14, 2019	900
Schedule E/F: Creditors Who Have Unsecured Claims For Non-Individual Debtor Pacific Gas and Electric Company	Mar. 14, 2019	906
Debtors' Joint Chapter 11 Plan of Reorganization	Sept. 9, 2019	3841
Debtors' First Amended Joint Chapter 11 Plan of Reorganization	Sept. 23, 2019	3966
Verified Statement of Ad Hoc Committee of Holders of Trade Claims Pursuant to Bankruptcy Rule 2019	Oct. 16, 2019	4214
Order Establishing Pre-Confirmation Briefing and Hearing Schedule for Certain Legal Issues	Oct. 31, 2019	4540
Debtors' Joint Chapter 11 Plan of Reorganization Dated November 4, 2019	Nov. 4, 2019	4563
Debtors' Brief Regarding Applicable Rate of Postpetition Interest on Allowed Unsecured Claims and Joinder of PG&E Shareholders (the " <u>Debtors' Opening Brief</u> ")	Nov. 8, 2019	4624
Consolidated Edison Development Inc.'s Reservation of Rights Regarding Postpetition Interest on Unsecured Claims	Nov. 8, 2019	4625
Consolidated Opening Brief of the Official Committee of Unsecured Creditors and Other Creditor Groups and Representatives Regarding the Appropriate Postpetition Interest Rate Payable on Unsecured Claim in a Solvent Debtor Case (the " <u>Creditor Groups' Opening Brief</u> ")	Nov. 8, 2019	4634
Joinder in Consolidated Opening Brief of the Official Committee of Unsecured Creditors and Other Creditor Groups and Representatives Regarding the Appropriate Postpetition Interest Rate Payable on Unsecured Claims in a Solvent Debtor Case	Nov. 8, 2019	4636

1	Reservation of Rights of the Ad Hoc Group of		
2	Subrogation Claim Holders Regarding the	Nov. 22, 2019	4840
3	Appropriate Postpetition Interest Rate Payable on		
	Unsecured Claims in a Solvent Debtor Case		
4	Debtors' Brief in Opposition to Consolidated		
5	Opening Brief of Unsecured Creditors and Other	Nov. 22, 2019	4849
6	Creditor Groups and Representatives Regarding		
7	the Appropriate Postpetition Interest Rate Payable		
8	on Unsecured Claims in a Solvent Debtor Case;		
	Joinder of PG&E Shareholders (the " <u>Debtors'</u>		
	<u>Responsive Brief</u> " and, together with the Debtors'		
	Opening Brief, the " <u>Debtors' Briefs</u> ")		
9	Consolidated Reply Brief of the Official		
10	Committee of Unsecured Creditors and Other	Nov. 22, 2019	4855
11	Creditor Groups and Representatives Regarding		
12	the Appropriate Postpetition Interest Rate Payable		
13	on Unsecured Claims in a Solvent Debtor Case		
	(the " <u>Creditor Groups' Responsive Brief</u> " and,		
	together with the Creditor Groups' Opening Brief,		
	the " <u>Creditor Groups' Briefs</u> ")		
14	Letter Dated Dec. 5, 2019 in Support of Creditor	Dec. 5, 2019	5003
15	Groups' Briefs		
16	Letter Dated Dec. 6, 2019 in Support of Debtors'	Dec. 6, 2019	5018
17	Briefs		
18	Memorandum Decision Regarding Postpetition	Dec. 30, 2019	5226
19	Interest		
20	First Amended Verified Statement of Ad Hoc	Dec. 10, 2019	5060
21	Committee of Holders of Trade Claims Pursuant to		
	Bankruptcy Rule 2019		
22	Debtors' and Shareholder Proponents' Joint	Dec. 12, 2019	5101
23	Chapter 11 Plan of Reorganization Dated		
	December 12, 2019		

1 2 3 4 5 6 7 8 9 10 11 12	DOCKET TEXT ORDER (no separate order issued:) For the Make-Whole Optional Redemption issue arguments on January 14, 2020, at 10:00 AM, Debtors and the joining Shareholders will have a total of one hour, including time for rebuttal, to be shared as their counsel agree. The opposing creditor groups will also have one hour, to be shared as their counsel agree. At the conclusion of the hearing the court would like counsel to be prepared to address the questions raised in the Memorandum Decision regarding Postpetition Interest (Dkt. No. 5226), namely whether orders disposing of that issue and the Make-Whole issue should be certified for direct appeal to the court of appeal, certified as final under FRCP 54(b), or both, or neither. (RE: related document(s)[4896] Support Brief/Memorandum filed by Debtor PG&E Corporation). (Montali, Dennis)	Jan. 9, 2020	N/A
13 14	Trade Committee's Statement in Connection with January 29, 2020 Status Conference	Jan. 27, 2020	5517
15 16 17 18	Debtors' Motion Pursuant to 11 U.S.C. §§ 363(b) and 105(a) and Fed. R. Bankr. P. 6004 and 9019 for Entry of an Order (I) Approving and Authorizing the Debtors to Enter into Restructuring Support Agreement with Consenting Noteholders and Shareholder Proponents and (II) Granted Related Relief	Jan. 27, 2020	5519
19 20	Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated January 31, 2020	Jan. 31, 2020	5590
21 22 23 24 25	Limited Objection of the Ad Hoc Committee of Holders of Trade Claims to Debtors' Motion Pursuant to 11 U.S.C. §§ 363(b) and 105(a) and Fed. R. Bankr. P. 6004 and 9019 for Entry of an Order (I) Approving and Authorizing the Debtors to Enter into Restructuring Support Agreement with Consenting Noteholders and Shareholder Proponents and (II) Granted Related Relief	Feb. 3, 2020	5596
26	Interlocutory Order Regarding Postpetition Interest	Feb. 6, 2020	5669
27 28	Order Establishing Schedule for Disclosure Statement Approval and Plan Confirmation	Feb. 6, 2020	5673

[Proposed] Disclosure Statement for Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization	Feb. 7, 2020	5700
Hearing Transcripts	Filing Date	Docket No.
Transcript of Aug. 13, 2019 Hearing	Aug. 14, 2019	3540
Transcript of Sept. 24, 2019 Hearing	Sept. 25, 2019	4003
Transcript of Oct. 7, 2019 Hearing	Oct. 8, 2019	4162
Transcript of Oct. 23, 2019 Hearing	Oct. 24, 2019	4467
Transcript of Dec. 11, 2019 Hearing	Dec. 12, 2019	5085
Transcript of Hearing at Jan. 29, 2020 at 10:00 a.m. (PST)	Jan. 30, 2020	5562
Transcript of Hearing at Jan. 29, 2020 at 1:30 p.m. (PST)	Jan. 30, 2020	5563
Transcript of Feb. 4, 2020 Hearing	Feb. 5, 2020	5634

Appellant reserves the right to designate additional items for inclusion in the record and/or restate issues presented on appeal.

CERTIFICATE REGARDING TRANSCRIPTS

Appellant certifies pursuant to Bankruptcy Rule 8009(b)(1) that it is not ordering any transcripts. All transcripts have been prepared, are filed on the docket, and have been designated in the record.

[Signature to follow.]

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Dated: March 5, 2020

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Michael S. Neumeister
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